done in these circumstances. For my part I am not satisfied that to decelerate and not to apply the brakes was all that could and should have been done by a careful driver in this situation. It follows, therefore, in my view that the defendant has not discharged the onus which rests on him of proving that he was not negligent and therefore he has failed to rebut the *prima facie* case established against him by the *res ipsa loquitur* principle in this case. Accordingly I am of the opinion that the appeal should be allowed and that the plaintiff should be awarded the damages assessed by the learned trial Judge.

The respondents must pay the costs of this appeal but as regards the costs in the Court below, since practically the whole of the time taken in that Court was occupied by the plaintiff's affirmative case of negligence, an issue on which he has throughout been unsuccessful, I think there should be no order as to the costs of the proceedings in the Court below.

Thomson C.J. (F.M.) : — I have had the benefit of reading the judgment of the Chief Justice of Singapore in this appeal with which I am in entire agreement.

In the ordinary way as we are differing from the learned trial Judge I should have added a few words of my own. In the present case, however, the course of reasoning which has compelled my brother Whyatt to the conclusions stated by him is so much the same as the course of reasoning which has compelled me to the same conclusions that I feel no useful purpose would be served by my stating it again in my own words.

I agree that the appeal should be allowed and I agree with the proposed order as to costs.

Knight J. : — I too have had the benefit of reading the judgment of the learned Chief Justice of Singapore with which I am in full agreement.

Appeal allowed.

Solicitors : *Murphy, Dunbar & Chung; Allen & Gledhill.*

Re PETER WONG & ANOR.

[O. C. J. (Whyatt C.J.) March 8, 1957]

[Singapore — Consolidated Bankruptcy Petitions Nos. 430 & 576 of 1955 and 7 & 8 of 1957]

Bankruptcy Ordinance (Cap. 11), s. 3 — Bankruptcy notice giving an address of the creditor outside the jurisdiction of the Court — Invalidity — Debtor possessed of no property liable to seizure.

In this case the applicants applied to withdraw two bankruptcy petitions filed in 1956 against Peter Wong and his wife. The allegation in those petitions were that the debtors had committed an act of bankruptcy in failing to comply with bankruptcy notices served on them in 1955 but it appeared that the address of the creditors given in the bankruptcy notices were outside the jurisdiction. While these two petitions were still pending, two further bankruptcy petitions were filed against the two debtors, the act of bankruptcy relied on being that the Sheriff had made a return that the debtor was possessed of no property liable to seizure.

Held: (1) the bankruptcy notices served on the debtors in 1955 were invalid as the address of the creditors given in the bankruptcy notices was outside the jurisdiction;

(2) as the Sheriff had made a return that the debtor was possessed of no property liable to seizure and as on the facts it appeared that the Sheriff's return was correct, receiving and adjudication orders must be made against the debtors.

Case referred to :—

(1) *Re a Debtor* (1912) 1 K.B. 53.

BANKRUPTCY PETITION.

D. G. Osborne-Jones for the debtors.

T. E. Atkinson for the creditors.

Whyatt C.J. : — On the 29th March, 1956, two bankruptcy petitions were filed against Peter Wong and his wife, Lily Leung, by Harlow & Jones Ltd. and Industrial Specialty (Iron & Steel) Ltd. who were judgment creditors for substantial sums. Nine months later, on the 11th January 1957, while the 1956 petitions were still pending, two further bankruptcy petitions were filed against these two debtors, the creditors on this occasion being Mirandolle Voute Ltd. All four petitions came on for hearing before me on the 11th February when I reserved my decision on an application to withdraw the two 1956 petitions but made receiving orders and adjudication orders on the two 1957 petitions, stating that I would give my reasons for doing so later. It will be convenient to deal with all these outstanding matters in this judgment.

The 1956 petitions alleged that the debtors had committed an act of bankruptcy in failing to comply with bankruptcy notices served on them on the 1st October 1955 and the 2nd December 1955 respectively. The address of the creditors given in the bankruptcy notices was No. 18 Buckingham Gate, London, England and when the petitions came before the Judge sitting in bankruptcy on the 14th December 1956, counsel for the debtors raised the objection that the bankruptcy notices were bad since the address was outside the jurisdiction; he cited in support of his argument the case of *Re a Debtor*[1]. Counsel for the creditors did not take the point that the debtors had not given proper notice of this objection under the Bankruptcy Rules and after some discussion, the learned Judge agreed to adjourn the hearing of the petitions to allow the creditors to consider their position. When the petitions eventually came on for hearing before me on the 11th February 1957, the creditors asked leave to withdraw

them. In the meantime, two fresh petitions had been filed by different creditors on the 11th January 1957 and I have no doubt that those interested in obtaining receiving and adjudication orders against these debtors were well advised to adopt this course instead of persisting with the original petitions. It is abundantly clear, on the authority of a *Re a Debtor*[1] that the bankruptcy notices served on the debtors in 1955 were bad and could have been set aside. The fact that the debtors did not make an application to set them aside cannot, in my view, render valid that which was invalid, and therefore, as there was no valid bankruptcy notice, it follows there could be no valid act of bankruptcy and consequently these creditors were not entitled to present these petitions. The normal course, in these circumstances, would be to dismiss the petitions with costs but if as an alternative to this procedure, the creditors ask to be allowed to leave by a side-door, I see no reason why they should not do so provided they pay the debtors' costs of these abortive proceedings as they leave. Accordingly I give leave to withdraw these petitions on payment of the debtors' costs.

In the new petitions filed on the 11th January 1957, the creditors relied upon an entirely different act of bankruptcy. The provisions of paragraph (j) of sub-section (1) of section 3 of the Bankruptcy Ordinance provide that a debtor commits an act of bankruptcy if the Sheriff makes a return that he is possessed of no property liable to seizure. In the present case the Sheriff seized certain goods on behalf of judgment creditors on the 8th January 1957 but a third party, Edward Wan Mau Au by name, claimed them as his property and after some correspondence between the claimant and the judgment creditors' solicitors, they were released. After the release, the Sheriff made a return that the debtors had no property liable to seizure but subsequently, on the 7th February 1957, the debtors filed affidavits in these proceedings, in which they alleged that they were still interested in the business of Lip's Company, that the company's banking account was very interesting, and that the company held stocks of goods worth more than $38,000 and furthermore that they were interested in a housing scheme involving approximately $600,000. The petitioning creditors, however, called oral evidence to rebut the debtors' contention that they still possessed assets and therefore the Sheriff's *nulla bona* return was incorrect. The solicitor for the petitioning creditors stated on oath in the witness box that the debtor, Peter Wong, called at his office on the 15th January 1957 and asked for an interview. He did not request that the interview should be treated without prejudice and after it was concluded, the solicitor communicated the substance of the discussion to his clients in a letter dated the 15th January 1957 which appears as an exhibit to the solicitor's managing clerk's affidavit in these proceedings. Counsel for the debtors, I have no doubt in a wise exercise of his discretion, did not challenge this witness in cross-examination and in my view the proper conclusion to be drawn from the information which was given by Peter Wong to the solicitor for the petitioning creditors on that occasion is that the debtors admitted their indebtedness to the petitioning creditors and also the correctness of the Sheriff's return. I should add that it was not suggested by counsel for the debtors that Peter Wong was not authorised to speak on behalf of his wife at this interview, but if such a suggestion had been made, I would have found that it was a reasonable inference, from all the circumstances of this case, that he was speaking on behalf of his wife as well as on his own behalf on that occasion.

It follows that this case falls within the provisions of paragraph (j) of sub-section (1) of section 3 and that the debtors committed an act of bankruptcy which entitled the creditors to present these petitions on the 11th January 1957. I should perhaps mention that, as an alternative argument, the petitioning creditors advanced the proposition that the Court could not in any event go behind the Sheriff's return, and that the debtors only recourse, if the Sheriff had made a *nulla bona* return incorrectly, was to ask the Court to dismiss the petition under the provisions of sub-section 3 of section 6 of the Ordinance. It is not, however, necessary to decide this alternative argument as I am satisfied that in the present case the Sheriff's return was correct, and accordingly I reserve my position on this point.

For these reasons I made receiving orders and adjudication orders on the petitions of the 11th January 1957 with the usual order for payment of the petitioners costs.

Order accordingly.

Solicitors: *Osborne-Jones & Co.; Allen & Gledhill.*

ABBAS JUMAT v. REG.

[C. C. A. (Whyatt C.J., Whitton and Tan Ah Tah JJ.) March 8, 1957]

[Singapore — Criminal Appeal No. 19 of 1956]

Criminal Trial — Allegation that prosecution had failed to produce material evidence — Leading questions — Witness talking to a member of the jury — Whether accused prejudiced thereby.

This was an appeal against the conviction of the appellant on five charges of using forged cheques. The memorandum of appeal set out under more than thirty different headings the various grounds of appeal but only three grounds were considered relevant by the Court of Criminal Appeal. They were (a) that counsel for the Crown had failed either to place before the jury material